thorized by Congress and proclaimed by the President.

The Council, with members representing corporations and labor unions with demonstrated interest in the employment of handicapped persons, will conduct informational and educational activities on behalf of the Conference.

The Council will participate in deliberations of the Conference and in the drafting of findings and recommendations to be submitted to the President and Congress.

Special attention will be given to continued industry and labor efforts to satisfy requirements of the Rehabilitation Act of 1973 which mandate affirmative action in the hiring of handicapped people.

We will recall that Public Law 93-516, Rehabilitation Act Amendments of 1974, authorized the White House Conference on Handicapped Individuals "to develop recommendations and stimulate a National assessment of problems and solutions to such problems facing individuals with handicaps."

On behalf of the members of the Subcommittee on the Handicapped, which I am privileged to chair, I express our appreciation to the Council and its leaders. The White House Conference will derive the benefits from the involvement and expertise of industry and labor.

Most Americans and especially those who are handicapped, the equal opportunity begins with employment. The formation of this Council is an expression of the continuing effort by Mr. Opel, Mr. Meany, and industry and labor to assist in providing that opportunity to handicapped Americans.

THE NEED FOR A SURFACE EFFECT SHIP

Mr. TAFT. Mr. President, I would like to bring to the attention of the membership an article from Business Week magazine, "A Warship That Flies Over Water." The article describes the successful progress of the surface effect ship program. The SES promises to be an effective type of surface ship for combat against modern, nuclear-powered submarines—unlike current surface ships. The SES program is moving forward well, and, as this article notes, we should take delivery of our first oceangoing SES in 1983.

Despite the success thus far of the SES program, I do have some concern that planning may not be going forward to equip the 3,000-ton SES with a full and appropriate suite of sensors and weapons. A ship is only as effective as its sensors and weapons, and even the first ship of the class should have a full weapons and sensor suite.

Furthermore, the weapons, and most importantly, the sensor systems, particularly those for antisubmarine warfare, should be appropriate to the specific qualities of the ship. I hope adequate planning will be done along these lines, and I intend to keep careful watch to see that this is done.

Mr. President, I ask unanimous consent that the article, "A Warship That Flies Over Water," be printed in the RECORD at this point.

There being no objection, the article was ordered to be printed in the RECORD, as follows:

A WARSHIP THAT FLIES OVER WATER

"It was an exciting moment when we broke 100 mph," says Navy Secretary J. William Middendorf II. "The ship's speedometer wasn't built to record that much speed, and it broke. At that moment I felt I was riding the wave of the future."

Middendorf was describing the high point of his ride in the Gulf of Mexico last week aboard the Navy's newest speed merchant, a 100-ton prototype, wave-skimming ship that moved on a self-generated air cushion up to 103 mph—faster than any ship has ever traveled before. Tests of two such vessels, which the Navy calls surface-effect ships (SES), have persuaded the Defense Dept., to let the Navy scale the design up to a 3,000-ton, destroyer-size ship that could be the forerunner of a fleet. A fleet of such ships, says Middendorf could be an almost perfect antisubmarine weapon and thus revolutionize naval warfare.

Until this year the chances of such a fleet seemed remote. The two 100-ton test ships had been built for the Navy back in 1972 by Aerojet-General Corp. and Bell Aerospace Co., a division of Textron Inc. But both were plagued by stability and propulsion problems. In 1974 Aerojet-General dropped out of the program, and the Navy was forced to find another contractor, Rohr Industries Inc., to take over modification and testing of the Aerojet ship. Bell continued work on the other test vessel.

CURING THE BUGS

A major goal in the modification program was to improve the strength and resiliency of the seals, or "skirts," that contain an SES's air cushion. Unlike conventional air-cushion vehicles, which lift their skirts above the water or ground, an SES has rigid, wall-like extensions that protrude into the water on both sides of the hull and stay submerged even when the ship is "flying." These solid walls add to the craft's stability, but they put great stress on the flexible seals fore and aft, which tended to crack or tear. The designers solved the problem by turning to a stronger seal material—a tightly-woven fabric of nylon or Kevlar coated with a tough rubber compound.

In recent months engineers have overcome other problems, too. They redesigned the water-intake system for the ships' gas-turbine waterjet propulsion system. And they engineered a system of sidewall vents to adjust air-cushion pressures so the vessels can move smoothly and safely at high speeds in rough seas. "Until we learned how to relieve the air-cushion pressures," says William D. O'Neil III, a Defense Dept. ship research specialist, "it was like driving fast over railroad ties."

BIDDING COMES NEXT

Invitations are now out for bids to build the 3,000-ton SES, and Congress is expected to appropriate some $48 million for the ship in the next fiscal year. The Navy will choose a contractor shortly thereafter. "We will take delivery of the first SES about 1983," Middendorf predicts. After that, he says, 'we will deploy as many as possible."

In the long run, there could be several contractors building surface-effect ships, but the early choice seems to narrow down to Bell and Rohr because of their close involvement with the testing and evaluation phase. Bell President William G. Gisel expresses confidence on getting the inside track for the first big SES. "Over the past 17 years," he notes, "Bell has designed and built 16 air-cushion surface-effect ships. We have a unique capability." But Rohr is also making a hard pitch.

"The Navy program is at the top of our list of new business opportunities," says Rohr Chairman Fred W. Garry. "We see it as the first step in the development of a major new industry, one that would design and build such ships not only for the military but for commercial applications as well."

To save time on the 3,000-ton ship, existing hardware will be used wherever possible. Four gas turbines built by the Pratt & Whitney Aircraft Div. of United Technologies Corp. have already been chosen for the waterjet propulsion system, and two General Electric Co. gas turbines will run the huge fans to generate the ship's air cushion.

COMBAT ROLE

Naval officers familiar with the SES program do not feel Secretary Middendorf is exaggerating when he talks of revolutionizing naval warfare. A 3,000-ton SES, which would be much faster than today's version, could cross the Atlantic in a single day, they say. It could outrun and corner enemy submarines. And, armed with antiaircraft and antiship missiles and carrying vertical-take-off aircraft, it could be an ideal vessel for convoy protection.

Rear Admiral Edward W. Carter III, a deputy commander of the Naval Sea Systems Command, is most enthusiastic about the antisubmarine potential. "Surface-effect ships will be able to respond quickly to submarine contacts over long distances, and they will have the endurance, the sensors, and the weapons to both localize and destroy submarines," he says. In addition, an SES has capability for what the Navy calls "sprint and drift tactics." It could bob quietly in the water for long periods, with towed arrays of hydrophones listening for enemy submarines. Its engines can be started instantly, and it will have the speed not only to outrun any sub but also to dodge torpedoes.

No one expects surface-effect ships to supplant ships with conventional hulls, especially aircraft carriers. But Middendorf declares: "We entered this century with ships built in 1897 that could do 35 knots. If we do not look to the future wtih surface-effect ships, we will end the century with ships still doing 35 knots."

ADMINISTRATION'S FEEBLE RESPONSE TO BRIBERY

Mr. PROXMIRE. Mr. President, the administration has now delivered itself of a tardy and tepid proposal intended to deter improper payments overseas by U.S. business. The administration bill would require U.S. companies to report to the Secretary of Commerce payments made to foreign officials intended to commercially benefit the payor. The report would be kept secret for a year, or indefinitely if the Secretary of State unilaterally decided secrecy would be in the national interest.

This is the same Secretary of State, incidentally, who intervened in the SEC's case against Lockheed to urge the judge to seal the documents. This is the same Secretary of State who has been more concerned to protect corrupt foreign regimes from embarrassment than to deter bribery. And, of course, it is the same Department of Commerce which has a similar reporting program aimed at deterring cooperation with the Arab boycott, that has largely failed to do so, and has refused to supply the reported information to Congress.

be to prevent employers from discriminating against any employee who is a qualified student and refuses to join a union or pay dues or fees to a labor organization as a condition of his continued employment. In other words, the bill would provide for a genuine freedom of choice in labor relations matters for high school, technical school, and college students who wish to earn tuition or spending money through part-time or summer jobs to see them through the academic year.

Mr. President, at the time of introduction I failed to state that this legislation would not be legally required in the 20 States having right-to-work laws which are exempted under section 14(b) of the National Labor Relations Act. However, soon after my bill was offered, I received a letter from a young Indian boy, a high school student residing in Parker, Ariz., complaining of treatment he had received at the hands of union representatives when he tried to obtain part-time employment.

Mr. President, I ask unanimous consent that the letter from Randolph Fisher be printed in the RECORD at this point, together with my reply.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PARKER, ARIZ.,
June 24, 1976.

DEAR SIRS: I am a sixteen year old Indian boy living in Parker, Arizona, on the Colorado River. I am now working a partime job with Telles Packing shed, and I was wondering weather you had to join a Union in a right to work State, because the other day we had a strike here and after the strike a Union man came around and said I had to join a Union because the Union had a contract with the company. I asked him how much it would cost to join the Union he said $63.00. And he said if I didn't join the Union I would lose my job.

RANDOLPH FISHER.
(Age 16.)

P.S.—All I want is a job so I can go to school, and make money I don't care about the Union.

JULY 21, 1976.

Mr. RANDOLPH FISHER,
Parker, Ariz.

DEAR RANDY: Thank you for writing to me about your recent problems with the union at Telles Packing.

As you know, Arizona is a "right-to-work" state. It has a law that protects workers like yourself from having to join a union or pay union dues or fees as a condition of employment.

Therefore, it is illegal for any union official to force you to pay membership dues in order to hold a part-time job at Telles Packing shed or anywhere else. If someone tells you that you have to pay $63.00 or any other sum to work, he is wrong. You should take the matter to your employer and file a formal complaint against the union with the National Labor Relations Board, through the local office of the Department of Labor. What the union is doing is unfair labor practice and is strictly prohibited by law.

I am forwarding a copy of this letter to your employer who may not be aware of the situation at his plant.

For your information, I have introduced legislation to protect students all over the country from discrimination by unions similar to the situation you encountered in Parker. Enclosed is a copy of my bill, the Students' Freedom of Choice Act, with my statement upon introducing it in the Senate. Hopefully, the Congress will take positive action to correct abuses by labor unions and protect the employment rights of young people and all other Americans seeking work in our free enterprise system.

With kind regards,

Sincerely,

PAUL FANNIN,
U.S. Senator

Mr. FANNIN. Mr. President, the situation encountered by this 16-year-old Indian student is deplorable but not unusual. It is unconscionable that the union would demand of a lad with meager financial resources who is trying to make ends meet an exorbitant payment just so that he can hold a part-time job. It is unfortunate that even in a right-to-work State like Arizona students are being discriminated against by unions and employers because they fail to qualify for union membership or pay union fees or dues. It is bad enough that working students do not know their rights under current law; it is tragic that they are not afforded the protection of employment rights under the law. The purpose of my legislation is to insure that students—whether or not they live in right-to-work States—enjoy the full panoply of those rights so that they can hold a job without having to succumb to the kind of union demands or threats encountered by this Indian student.

Mr. President, clearly there is a growing recognition of the need for reform of our Federal labor laws including protection for working students from the requirements of compulsory unionism and from discrimination by employers and organized labor. I am pleased by the overwhelmingly favorable response the students' Freedom of Choice Act has received from young people, from ordinary working citizens, from employers, and from the press. As examples of press comment, I call to the attention of my colleagues the editorials published by the Flagstaff, Ariz., Sun on July 28 and the Williamsport, Pa., publication Grit on July 11, 1976. I ask unanimous consent that the complete texts of these two editorials be printed in the RECORD.

There being no objection, the editorials were ordered to be printed in the RECORD, as follows:

[From the Flagstaff (Ariz.) Sun, July 28, 1976]

THERE IS MERIT IN FANNIN'S BILL

Arizona Sen. Paul J. Fannin is the principal sponsor of a bill which would amend the National Labor Relations Act and the Railway Labor Act.

If Fannin's bill gets through Congress, all full-time students enrolled in a high school, college, technical or trade school would be exempted from the requirements of compulsory unionism.

In some situations, a student holding down a part-time vacation job is required to pay union dues in order to keep that job. Yet, in most instances, they cannot participate in the so-called benefits, such as health insurance, sick pay and wage increases, which have been negotiated by the union and for which compulsory dues are supposed to be used.

A great many students are working so they can get enough money to finish school. They shouldn't have to be faced with an additional hardship of paying dues in order to hang on to that job.

There is merit to Fannin's legislation. Its chance of winning Congressional approval in this election year is probably remote. It won't gain any votes and is certain to alienate certain facets of organized labor. Without dues, there are no funds to pay union bosses, and the only other recourse would be to tap the pension funds of members.

[From Grit, July 11, 1976]

DON'T PENALIZE YOUNG WORKERS

Seven Republican senators led by Paul Fannin, of Arizona, have introduced a bill to exempt working students from compulsory union membership. Both the National Labor Relations Act and the Railway Labor Act require that even temporary workers who are full-time students must join the union which represents persons in a particular work force.

Under the law, employers have no choice but to refuse employment to a worker who declines to join the union which holds exclusive bargaining rights to all jobs in a work force. In one case, a 16-year-old student in Joplin, Mo., was forced to pay an initiation fee to the retail clerks union, plus $7 a month in dues, to sack groceries on Sundays.

Students holding temporary jobs receive little or no benefit from union membership. Normally they do not qualify for health insurance. Pension rights often accrue to a worker only after he has put in 10 years or more on the job. So exacting dues from a student holding a temporary or part-time job amounts to a rip-off.

The Fannin bill would apply to students enrolled in or registered for full-time programs in secondary, vocational, or higher education. If enacted, youths would be able to keep their hard-earned dollars to pay school expenses instead of contributing to rich and powerful labor organizations.

Unfortunately, the Fannin bill is not likely to be passed. The Senate Committee on Labor and Public Welfare, which has custody of the proposal, is dominated by pro-union Democrats who have no intention of amending present laws in ways not favored by the labor barons. Job discrimination against students will continue until the public insists that this wrong be righted.

JOHN OPEL, PRESIDENT OF IBM, AND GEORGE MEANY, PRESIDENT OF AFL–CIO, ACCEPT COCHAIRMANSHIP OF INDUSTRY-LABOR COUNCIL OF THE WHITE HOUSE CONFERENCE ON HANDICAPPED INDIVIDUALS

Mr. RANDOLPH. Mr. President I bring to the attention of our colleagues the announcement by Dr. Henry Viscardi, Jr., chairman of the National Advisory Council of the White House Conference on Handicapped Individuals that John Opel, president of IBM, and George Meany, president of AFL–CIO have accepted the cochairmanship of Industry-Labor Council of the White House Conference on Handicapped Individuals.

In a joint statement Council Cochairmen Opel and Meany said:

Handicapped Americans are a large minority in a country dedicated to equality of opportunity and the promise of hope for all.

For most—including 35 million handicapped individuals—the realization of that ideal begins with employment. Industry and labor, therefore, have a crucial interest in handicapped individuals on practical and humanitarian grounds.

The Industry-Labor Council will provide advice and support for the Conference to be held in May of 1977, as au-

In his statement releasing the administration proposal, President Ford argued that a disclosure approach would be easier to enforce than the outright prohibition unanimously recommended by the Senate Banking Committee in S. 3664.

It is clear that the reverse is true. To enforce a disclosure program, you would have to show that a payment had been made; that it had been made for a disclosable purpose; that it had not been reported; and, that the failure to report had been willful. Otherwise, companies could simply fail to report bribes.

The approach contained in S. 3664 is a much more simple one. It flatly prohibits payment of bribes, defined as payments or promises to pay anything of value to a foreign public official corruptly intended to influence the placement of business of legislation or regulations of a foreign government.

Enforcement is given to the SEC in the case of public corporations; to the Justice Department in the case of other persons. Actual prosecution would, of course, be initiated by the Justice Department in all cases. These are law enforcement agencies, while the Commerce Department is primarily a business promotion agency. It is the wrong agency to give enforcement powers.

I was delighted to read in today's New York Times strong editorial support for my bill and rejection of the administration's logic. As the Times notes, the administration bill falls short of the meaningful sanctions essential to stamp out bribery.

The Times also quotes an excellent article by Theodore Sorenson in the current issue of Foreign Affairs quarterly, in which Mr. Sorenson presents a compelling case for a direct criminal prohibition of bribery. Those who still believe disclosure is the preferable approach would do well to consult the Sorenson article.

I ask unanimous consent that both articles be printed in the RECORD.

There being no objection, the articles were ordered to be printed in the RECORD, as follows:

THE CRIME OF BRIBERY

The Ford Administration's plan to discourage corporate bribery abroad falls short of the meaningful sanctions essential to stamp out these improper though long established business practices.

The bill submitted to Congress this week relies almost solely on a disclosure requirement: any payments to foreign officials by companies in pursuit of business opportunities must be reported to the Federal Government. Under specified conditions, this information could then be made available to foreign investigative bodies and, eventually, to the public.

To be sure, disclosure does act in itself as a strong deterrent against many types of improper payments. But another bill sponsored by Senator Proxmire, chairman of the Banking Committee, goes further to declare the payment of bribes illegal under United States law, with appropriate criminal penalties.

The Administration's reasoning in resisting a criminal prohibition is unconvincing. It would indeed be difficult to enforce in many cases, but so would disclosure requirements. Any firm bent on continuing payoff relationships with foreign authorities or buyers could manage to conceal the payments, and the Government would have a difficult time establishing that an unreported payment had in fact occured. Further, to argue that any criminal prohibition should await internationally accepted rules, so that all exporting nations would have to operate under the same strictures, is to put off effective action to some far, indefinite—and perhaps unattainable—future.

Theodore C. Sorensen, whose New York law practice involves advising corporate clients on just these questions, makes a strong case for criminal prohibition in the current issue of Foreign Affairs quarterly. Mr. Sorensen argues that many corporate officials would actually welcome such legislation because it would make it easier for them to resist pressures.

As more and more leading American companies come forward these days to give the Securities and Exchange Commission details of improper and often illegal payments over years past, it is no longer possible to look upon the well publicized cases as isolated transgressions. A large part of world commerce seems to rest on the shabby foundation of bribery and routine payoffs; once such practices get started, it is difficult for any company to pull back on its own volition.

For its own protection, the business community—to say nothing of the broader public—needs the strongest possible Government sanctions against the corruption of everyday commerce.

IMPROPER PAYMENTS ABROAD: PERSPECTIVES AND PROPOSALS

(By Theodore C. Sorensen)

Like motherhood and apple pie (zero population growth? food additives?), corporate bribery abroad is not the simple, safe issue it seems at first blush. Sharp division and delay have characterized its consideration by the U.S. Securities and Exchange Commission, Department of Justice and Internal Revenue Service, and by several Committees of the U.S. Congress, the Organization for Economic Cooperation and Development (OECD), and the International Chamber of Commerce. In the United States, a Presidential Cabinet-level Task Force—and in the United Nations, the Committee on Transnational Corporations—have been asked to untangle the problem; but no solution is yet agreed upon.

The practice of exporters and investors offering special inducements to host country officials is at least as old as Marco Polo. But in the United States a post-Watergate climate of public exposure for all suspect practices connected with government has intensified both the investigations of these payments and the oversimplified publicity given to them. Indeed the seeds of the present furor were sown in Watergate. When the Special Prosecutor traced some of the "cover-up" financing to unreported corporate campaign contributions, often transmitted through foreign "slush funds," the SEC initiated a major check on all undisclosed payments to governments and politicians, both domestic and foreign, by the publicly owned companies subject to its jurisdiction.

As a result, U.S. corporate officials have engaged in the most painful rush to public "voluntary" confession since China's Cultural Revolution. Scores of U.S.-based companies have been investigated by one or more arms of the U.S. executive branch, legislative branch, and news media—or by their own directors. Many foreign officials of varying prominence have been forced to resign, deny, or both. The going rate for bribery has reportedly fallen in some countries as fear of disclosure increases, and risen in others as officials discover the full potential of their position. Debates between businessmen asserting that only they live in the "real world" ("Of course, I'm against bribery, but . . . .") and bureaucrats asserting that only they are without sin ("No payment of any kind or size for any reason should escape . . . .") have thus far produced more heat than light.

It is to be hoped that a calmer, more long-range perspective can soon prevail. Otherwise, genuinely legitimate business practices will be inhibited by an atmosphere of fear and suspicion, generated by sweeping and hasty reactions, while those truly intent on corruption will merely wait for the emotional storm to pass.

II

Clearly, our understanding of the problem is not enhanced by the tendency in some quarters to place all the blame on those few U.S. corporations which have received the most publicity. Those engaged in the sale of arms, aircraft, oil and pharmaceuticals—all highly government-oriented businesses—may have been in the forefront; but nearly all other kinds of business have been engaging in these practices as well: privately held corporations as well as publicly owned; small as well as large; strong as well as weak; producers of civilian goods as well as of military hardware; those who buy or invest as well as those who sell; and, most importantly, companies which are based abroad as well as companies based here in the United States.

Moreover, our country has no monopoly on the resulting stain. Contrary to common assertion, nor does the Third World. Bribe recipients have served in every kind of government on virtually every continent: anti-U.S. administrations and political parties as well as pro-U.S.; democracies as well as dictatorships; communist as well as non-communist governments; and rich industrialized nations as well as poor and underdeveloped nations. Nor is the blame confined to governments and business—members of the accounting and legal professions have played a role as well.

The picture has been further distorted by an outpouring of self-serving, self-righteous hypocrisy on both sides. Among the biggest hypocrites have been the following:

Those foreign governments which since time immemorial have closed their eyes and held out their hands, but which now denounce the United States for introducing corruption to their shores;

Those U.S. politicians who professed ignorance of the illegality of the corporate campaign contributions they received (or knew others received) in cash in sealed envelopes behind a barn or men's room door, but who now insist that various company executives be prosecuted because they should have known of their subordinates' improper activities abroad;

Those agencies of the U.S. government which long knew of and even approved of barely concealed payoffs by companies engaged in favored overseas sales and investments, but which now wring their hands at the unbelievable shame of it all; and

Those U.S. and foreign newspaper commentators who long winked at free junkets and passes for newsmen, even a little extra income doing public relations for the organizations they were covering, but who now condemn the ethical standards of the business community.

Nor have those issuing sweeping condemnations always noted certain valid distinctions. Not every payment to a foreign government employee is a bribe. Nor is every corporate political contribution abroad improper. Not every foreign consultant or sales agent is corrupt or retained to perform some improper function.

Political contributions paid in cash or in secret to foreign candidates or parties are rightfully suspect. But properly recorded corporate political contributions, with no quid pro quo, are legal in many if not most

of the United States; and the new Campaign Finance Reform Law, passed in the very wake of Watergate, permitted corporate-sponsored political activity in our federal elections. It is thus unfair and illogical to attack any and all participation by U.S. corporations or their subsidiaries in the political campaigns of other countries which also permit it by law.

Similarly, payments to a foreign consultant, agent, lawyer or marketer, if made in cash or not fully reported or if wholly out of proportion to his services, most likely deserve condemnation. But properly recorded payments, of an amount appropriate under the circumstances, to a qualified and responsible professional for his performance of legitimate and necessary services, may well be perfectly justifiable. To be sure, such individuals may be making the most of their personal, political, business or family ties with key government officials—a phenomenon not unfamiliar in our own country. But they also know the local language, procedures, personnel, regulations, press and sources of supplies and information. They can provide the visiting businessman with a local headquarters, communications and a means of scheduling and coordinating appointments, as well as valuable advice on strategy and presentation. Local government officials, for perfectly legitimate reasons including their sense of uneasiness in dealing with foreigners may prefer or insist upon working with a compatriot they know. The payment of a large commission to an agent is no more clear evidence of illegality than is payment of a large commission to an American real estate agent on the sale of an expensive home.

Not even all payments made to foreign government officials should be judged alike. Although U.S. statutes and judicial interpretations vary, the legal essence of *bribery* is a payment voluntarily offered for the purpose of inducing a public official to do or omit to do something in violation of his lawful duty, or to exercise his official discretion in favor of the payor's request for a contract, concession or privilege on some basis other than the merits. Many forms of payment now under attack do not constitute "bribery" under this definition.

For example, a certain amount of scoffing, much of it undoubtedly justified, has greeted the claims by some business executives that their payments to foreign officials were the result of extortion on the part of those officials, not bribery. But the courts do recognize the distinction between those payments which are voluntarily offered by someone who seeks an unlawful advantage and those which are extracted under genuine duress and coercion from an innocent victim seeking only the treatment to which he is lawfully entitled. A company which can demonstrate that it was truly confronted with an unmistakable choice between paying a corrupt foreign official, or seeing its entire investment in that country expropriated, is not paying a "bribe." (A recent U.S. Federal Court of Appeals decision reached a similar conclusion with respect to a hapless accountant indicted for having made payments to a group of threatening IRS agents.)

Nor does the above definition of bribery cover those payments, usually smaller, made by businessmen in a country where they are not prohibited, to facilitate, expedite or express appreciation for the normal, lawful performance of ministerial or procedural duties by a low-ranking government employee. "Grease" payments which help persuade the bureaucrat or functionary to do his job and continue the lawful flow of paper or goods should not be commended; but neither should they be confused with bribing that individual *not* to do his job.

Finally, there is a distinction not always easily determined, between a bribe and a relatively small sum of cash or other gift or service offered to an official by way of common courtesy or social amenity, a present put forward and accepted on the basis of amicable personal relations unconnected with the performance of his duty. Some of these payments are ethically questionable and of doubtful motivation as well; but there is a legal difference, however subtle, between the $20 bill you hand your local policeman on Christmas Eve and the $20 bill you hand him when he stops you for speeding (a difference recognized by a recent New Jersey Supreme Court decision involving a Christmas gift of cash from a builder to a municipal building inspector).

It is not easy, of course, to determine which foreign corporate political contributions, agents' fees, gifts, "grease" payments, and alleged extortion are in reality nothing more than indirect or camouflaged bribes or kickbacks. U.S. federal and state statutes frequently and justifiably prohibit or penalize these other forms of payment to public officials as well as bribes; and gray areas of interpretation will always remain. The size, form and timing of the payment, the adequacy of its disclosure, and other facts must bear on the conclusion in a doubtful case. Even then there will be countless situations in which a fair-minded investigator or judge will be hard-put to determine whether a particular payment or practice is a legitimate and permissible business activity or a means of improper influence:

Example 1. The best lawyer in a foreign town is the London-educated son of the Minister of Commerce. Should he be prevented from accepting clients who need permits from the Ministry? Should a U.S. corporation be prevented from retaining him? Would it make any difference if he were a consultant or agent instead of a lawyer? The opportunities for abuse here are undeniable but not inevitable.

Example 2. A U.S. corporation is asked by the Provincial Governor to contribute to the local Health and Welfare Fund, his favorite charity. Is this the obligation of a public-spirited company or an opportunity for covert graft?

Example 3. A U.S. corporation, already doing substantial business in a foreign country wishes to invest as well in one of its local suppliers. The Prime Minister is the latter's principal stockholder. Would it make any difference if it were another U.S. company in which they would be investors together?

Example 4. A U.S. corporation's valuable inventory abroad is stored in a remote warehouse. The nearest police are willing to act as after-hours guards if they are paid by the corporation for their overtime services? Must a less effective and more expensive alternative be found?

Example 5. A U.S. corporation wishes to form a joint venture with a local firm owned by a member of the ruling family (not unusual or considered unethical in small countries with small elites). But see Example 1.

Example 6. A U.S. corporation, seeking to locate its plant in an impoverished land, invites the impoverished Minister of Environmental Affairs to fly to the United States at its expense for a tour of its domestic installations, reportedly to demonstrate that its proposed plant will not pollute the local air and water. At what point does its hospitality become excessive; and should this expensive trip be more permissible than contributing the cash equivalent thereof?

Example 7. A U.S. corporation is informed that the government permit for which it was bidding has already been issued to a local corporation of unknown ownership which is willing to sell it to the U.S. bidder at the bid price. If no extra payment is thus involved, does the additional step render the transaction improper?

Reasonable men and even angels will differ on the answers to these and similar questions. At the very least such distinctions should make us less sweeping in our judgments and less confident of our solutions.

III

None of this, however, alters the basic parameters of the real problem:

It is illegal for a U.S. corporation to deduct as an ordinary business expense on its U.S. income tax return any bribes, payoffs, kickbacks or other improper payments to foreign government officials, whatever the label or justification, or any political contributions, whether lawful or not; for any corporation subject to the jurisdiction of the U.S. Securities Acts to fail to include and to describe accurately all such payments (assuming they are material to the company's finances or materially indicative of its management's integrity[1]) in its various statements and periodic reports to the SEC and shareholders required by those Acts; and for any such corporation to finance these payments through secret slush funds or phony offshore corporate entities outside the normal system of financial accountability prescribed by those Acts. Neither bribery of a foreign official outside the United States nor violation of a foreign law, however, appears to violate any U.S. law.

It is unethical for a corporation to pay bribes or kickbacks to foreign officials to induce them to violate their duty—a practice subversive of sound government, sound business and sound relations between the two, no matter how deeply entrenched it may have become in the host country; a costly, wasteful interference with the free competitive market system; and a cynical, shabby technique of getting business which usually rewards the richest, most reckless and ruthless while passing on the cost to those who can afford it least.

It is unbusinesslike for a corporation to pay bribes and kickbacks, regardless of how routine a practice it may appear to be in the host country and regardless of competitive pressures. This conclusion, it should be acknowledged, is far from unanimous in the business community. (The legend persists that the Harvard Business School student who questioned the ethics of this practice was directed by his professor to enroll in the Harvard Divinity School.) Nevertheless, a large number of U.S. corporations successfully operating overseas have constantly faced and consistently resisted the pressures and temptations to make payments. Those not resisting appear in many cases to have been those too lazy to compete in honest salesmanship or too inefficient to compete on price, quality and service.

Some corporate executives have undoubtedly achieved substantial gains in the short run by these methods; some have obtained only marginal business; and some will never know if their payments were necessary or helpful or even reached the intended official's pocket. But all who paid thereby established their companies as easy marks for more demands and blackmail. All were immediately courting trouble if they reported these payments and more trouble if they did not. All were exposing their corporations and themselves to the possibility of stockholder suits, legal action by the U.S. government, the possible disclosure of proprietary information of value to their competitors as a consequence, and retaliation by the host country ranging from the cancellation of orders to the nationalization of assets. Moreover, just as a handful of dishonest door-to-door peddlers can turn an entire town against home solicitation, so the conduct of these

[1] The appropriate limits of "materiality," if any, under the Securities Acts in general and in cases of improper foreign payments in particular are being hotly debated as this goes to press and are beyond the scope of the article.

corporations—at a time when the business community in general and multinational corporations in particular have been seeking to ward off unreasonable restrictions and suspicions—may have done a grave disservice to all who trade abroad. Surely, of all the hypocrites heard on this issue mentioned earlier, the greatest of all are those business executives who made such payments, whose corporations are now as a result in deep difficulty, but who insist they did it "for the good of the company."

This is not to deny the fact that, in far too many countries for far too many years, illicit inducements have been an accepted and customary way of doing business with the government, usually through agents whom virtually every visiting businessman is expected to retain. In still other countries, such payments, if not essential, are widely tolerated and expected.

But what is customary is not thereby ethical or even inevitable. In more than one American city widespread corruption in the police department, long thought too deeply entrenched to be uprooted, has been effectively exposed and curbed. The fact that many U.S. companies have successfully avoided these activities in the very countries where it was most customary, and that others have given up business opportunities in those countries and moved elsewhere as a matter of sound business judgment, undermines the payor's usual justification that he had no alternative, that "everyone does it," and that if he didn't do it someone else would (the same excuse offered by heroin pushers). Moreover, the fact that the typical local official who takes a bribe wants it kept secret, fearing punishment in his own country if his corruption becomes known, casts doubt upon any payor's defense that he was merely playing according to "the rules of the game."

IV

All this is by way of background for a consideration of U.S. national interests in the current situation. Without a clear understanding of the scope and nature of the problem and its implications for American business, neither the desirability nor the feasibility of a workable solution can be accurately assessed.

This is particularly true in light of the presently ambivalent attitude of the federal government. While the SEC, Department of Justice and Congress rail against improper payments abroad, more mixed signals have emanated from elsewhere in the executive branch.

American Embassies around the world have long known of these practices but voiced no protests to host governments and offered no protection to honest American businessmen. Those U.S. exporters who thought they were serving their country's foreign policy interests by making under-the-table payments to friendly foreign officials and political parties were never told otherwise. Occassionally State Department officials have been even offered guidance on the names and standard fees of those agents with the best connections.

The complicity of the Department of Defense in these practices appears even greater. In quadrupling over the last decade the sale of U.S. arms abroad, the Department approved contracts financed in whole or in part by military assistance funds without too close an examination of agents' fees and other contract terms, and it undertook to "educate" contractors on the necessity and implications of such fees. These sales helped maintain production capacity in this country which the Pentagon regarded as vital, helped achieve economies of scale for its own purchases from the same companies, and helped build closer technological and political ties with the military and governmental leaders of the recipient countries.

Now, with some present orders canceled as the result of current investigations and still others in doubt, the Pentagon is fearful of losing those advantages. Other agencies are similarly fearful that unilateral U.S. government restrictions on foreign bribery will make it more difficult for American corporations to compete for orders with any less scrupulous companies from Germany, Japan, France, Great Britain, and elsewhere, with adverse effects on U.S. exports, balance of payment and employment.

The State Department is, in addition, upset by the effect of the present investigations on several friendly governments. In Italy, Japan and elsewhere, governments in an already precarious position have been shaken by these revelations of corruption. Communist and other anti-U.S. forces have exploited this evidence of immorality in capitalism and pro-Western governments. Hostility to American interests has increased. More than one foreign official friendly to the United States is fearful of ouster and is resentful of America's role in exposing these traditional practices. More than one friendly foreign newspaper has chastised the United States for broadcasting its national self-flagellation to the detriment of the Western alliance.

But those who are angry at the revelation of bribes instead of at their payment (like those angry at Woodward and Bernstein instead of at Nixon) confuse the weatherman with the weather. Even before they were uncovered, these bribes—merely by being offered and accepted—had damaged American foreign policy and made it more vulnerable to its adversaries. By engaging in such debilitating practices, U.S. businessmen, who in most countries are more visible representatives of the American way of life than our diplomats, tarnished our country's image; subverted the lawful basis of friendly governments; aggravated the economic inequities and instability that inevitably accompany this subsidization and corruption of a power elite; and rendered both the host government and our own government more susceptible to an ultimate backlash.

I doubt that the messenger will in the end be condemned for bringing the bad news. Many foreigners, without ever fully understanding Watergate, came to admire the courage and independence of the American press, courts, prosecutors and legislative branch for exposing and cleaning up that mess. I believe the same will happen here. Certainly the Communists in Italy will now have difficulty maintaining that the multinational corporations and Wall Street dominate Washington, and equal difficulty denying that it was Washington's efforts instead of their own that helped expose this corruption in Italian politics.

To be sure, notwithstanding the virtues of disclosing and thus discouraging these practices, special care should be taken by both our executive and legislative branches not to publish the names of foreign officials accused only by unsubstantiated testimony, hearsay or rumor, and not to prejudice criminal proceedings in either our country or others by the premature publication or transmittal of such names. That is a legitimate concern of the President and the Department of State that must be respected. But even greater damage to America's reputation for justice and honor than has already been caused by the current revelations could result from any appearance of a cover-up—any suspicion on the part of the legislative branches or citizenries of other countries that the U.S. government is conspiring with their governments to delay indefinitely any disclosure affecting their incumbent officials or political parties.

Imagine the reaction of the American people had the Japanese government possessed vital information on Watergate and refused to transmit it to the House Judiciary Committee's impeachment proceeding, announcing instead that such information should go exclusively to our executive branch! Yet a similar paternalistic decision has been made by our Department of State; and it is small wonder that this approach has caused the darkest suspicions in Japan about the possibilities of CIA and other U.S. government involvement in these overseas slush funds and bribes.

So let the information flow, with due respect for the rights of the accused. Little attention need be paid to complaints about damaged reputations from those foreign officials who have for years accepted bribes; or from those foreign governments that have long tolerated their receipt by their own officials or their payment by their own exporters; or from those foreign governments which are not now seriously investigating the clear evidence of such practices in their midst; or from those which are making a great show of cracking down on them with the full intention of permitting their resumption once the heat is off. Any pro-U.S. political party whose success has depended upon this kind of secret subsidy and corruption could not have been a very strong reed upon which our country could have leaned in any event.

The other principal concern of the Pentagon and other executive branch agencies is well-founded. Any unilateral U.S. restriction on foreign bribery by U.S. exporters undoubtedly will cause our arms merchants and others to lose substantial sales opportunities to their less-principled competitors, at least in the short run, particularly in some of our weaker industries. That unfortunate fact should be acknowledged. A crackdown by the United States will not be cost free.

But surely these highly vulnerable and immoral arrangements between atypical U.S. businessmen and corrupt foreign officials provide a wholly untenable and shaky basis for building our military alliances. U.S. security and stature are not increased when foreign officials are improperly induced to ignore their countries' internal needs or to distort their defense priorities by spending their limited funds (or our limited military assistance grants) on what are frequently marginal weapons systems or a kind they do not need, cannot afford to maintain or will not be able to operate.

Moreover, there was no gain to our country's balance of payments or economy when U.S. companies paid bribes to win a contract that would otherwise have gone to another U.S. company. On the contrary, the added cost of these improper contracts to the host country further weakened the market for other U.S. exporters. The fact that some American companies have succeeded in these countries without the payment of bribes is an indication that U.S. exports will not suffer all that severely from an end to such payments. Those governments desirous of obtaining U.S. technology and quality will unquestionably learn to buy our goods without any special inducement.

In short, it is on balance in the long-run interest of the United States to halt these wasteful, corrosive and indefensible payments to foreign officials by U.S.-based corporations and their subsidiaries. Such action would enable this country once again to offer moral leadership to the world, demonstrating our concern not only for the defense of society but also for the kind of society we are defending, and practicing what we preach about the free market system. It would also provide a sounder basis for our alliances, increase respect for our values, enhance our standing with more progressive elements desirous of reform, and make those governments purchasing from us less vulnerable to future political attack.

Such action would not be, as often charged, an attempt by the United States to impose its puritanical standards on the rest of the

world, disregarding the sovereignty of others and policing everyone else's ethics in a hopeless attempt to reform mankind. Not at all. It would instead simply require corporations based in our own country to adhere, wherever they operated, to a standard that served U.S. national interests. Our antitrust, Trading with the Enemy, and other statutes have long been held to have similar extraterritorial application. Setting a good example does not require any other government to follow it.

Of course, it would be preferable if every commercially important government in the world not only enacted but enforced tough and comprehensive laws against the payment and receipt of bribes. That would avoid any adverse competitive consequences of unilateral U.S. action. But awaiting development of an international code by the OECD, GATT, IMF or the United Nations is largely an excuse for delay and inaction. Most of the members of these organizations are not in agreement on what should be done, and many are not enthusiastic about doing anything. Such codes, if they were to be truly meaningful and enforced, would have to sink to the level of the lowest common denominator. Mild admonitions from the OECD and generalized resolutions from the United Nations are the best they are likely to produce.

The United States will be in a stronger position to call for action from other countries, and to embarrass or otherwise pressure any U.S. companies' competitors who are still paying bribes, after we have taken effective action against our own unethical corporations in this regard. Inasmuch as Congress is already past the halfway mark in an election-year session, enactment of new legislation may as well await a fuller determination this year of the entire range of the problem—lest American business be confronted with an incomplete statute constantly undergoing amendment. Nevertheless it should be already clear to our Congress that our present laws are not adequate, and that action should be taken next year before public interest in the problem flags.

Apart from the illegality of deducting such payments on U.S. tax returns, the principal statutory tool by watch U.S. companies can currently be called to account is the variety of disclosure requirements in the Securities Acts. In addition, Congress has recently called for further disclosures with respect to military sales under the latest foreign aid legislation; and a similar emphasis on disclosure is contained in most of the other legislative proposals on overseas bribery.

This emphasis is well placed. Sunlight, in the memorable phrase of Justice Brandeis, is still the best disinfectant. A company legally required to expose its bribes—and thus face whatever stockholder suits, public embarrassment and government penalties may follow—is less likely to make these payments in the first place and their collaborators are less likely to demand them.

But our present disclosure laws must be strengthened: to impose more severe and certain criminal as well as civil penalties for those who fail to disclose to the appropriate U.S. government authorities any payments abroad, including legitimate political contributions and agents' fees, of a significant amount; to cover privately owned companies as well as those subject to SEC jurisdiction (indeed the SEC may not be the appropriate enforcement agency); to cover exporters of civilian as well as military goods; to cover requests received (as is true of current U.S. Commerce Department regulations concerning the Arab boycott) as well as payments made; and to prohibit more precisely the many techniques used to conceal these practices from corporate and governmental accountability systems.

Disclosure, however, cannot carry the whole burden of law enforcement. It would be illogical to punish more severely than at present the nondisclosure of an activity not now illegal under U.S. law. Moreover, when the general or stockholding public proves to be indifferent to a company's disclosures of wrongdoing, as is often the case, no penalty and no reform may follow.

The more direct and traditional approach to law enforcement is simply to outlaw the payment of bribes and kickbacks to foreign officials by all U.S. corporations and their subsidiaries. Many corporate officials would actually be relieved by such legislation; for it would better enable them to resist all temptations and pressures and to hold both their subordinates and at least their U.S. competitors to a higher standard. It would also provide a stronger legal basis for independent auditors, directors and lawyers—as well as federal authorities—to insist in suspicious cases upon a closer look at the books. It would communicate to every company and government the clearest possible statement of our national integrity.

Such a law would have to be drawn and enforced with great care and precision, carefully setting forth the distinctions between bribery and the other forms of payments described above, and not undertaking to enforce what it cannot reach without placing numerous police agents in every U.S. Embassy. Unenforced and unenforceable laws only engender disrespect.

Nor should compliance with a host country's laws be available as a defense under this new statute. Too many of those laws are ambiguous, incomprehensible or unenforced, and the United States cannot undertake to enforce them. Nor, in some countries, is compliance with the law much proof of probity.

No matter how carefully the new statute is drafted and implemented, however, some improper practices will escape and some new ones will be invented to circumvent it. A foreign agent who acts as an independent contractor for several companies will be able, on his own initiative and with his own funds, without the knowledge or reimbursement of a principal, to make improper payments on that principal's behalf that no outside law can reach. U.S. corporations wishing to avoid the law by selling to truly independent local distributors who in turn resell to the local government, complete with kickbacks, will no doubt be able to do so, at least diminishing the impact of their conduct on the United States. Extremely difficult problems of definition, fact-finding and interpretation, such as the seven examples earlier cited, will be frequent.

But the courts and Congress are not unaccustomed to drawing fine lines of distinction. Many another law now on the books is frequently violated but nevertheless desirable as a national standard, even if some violations go undetected. With a strengthened disclosure statute, whatever federal agency is enforcing the law will not be without tools to judge the legality of a suspect payment.

The new law could also regulate the use of agents. To prohibit their use would be outlandish, curbing many legitimate practices and merely causing those intent on paying bribes to conceal them elsewhere. To impose a maximum commission rate would only penalize "small-ticket" sales. But U.S.-based corporations could be required (1) to disclose to the U.S enforcement agency not only every sizable fee or commission paid overseas but also the services for which it is paid and the recipient's qualifications therefor; (2) to instruct the agent by contract to make no payments to or for government officials and no political contributions on its behalf or with its funds; and (3) to obtain the explicit approval of the host government for that contract and for the agent's rate of compensation. Honest and qualified agents will, on the whole, accept such conditions; those intent on dishonesty will not.

Still other new legislative or executive measures could empower the executive branch to take supplementary action. Violators should be warned that the U.S. government would terminate their eligibility for government contracts and impose no obstacle to their extradition to any country possessing actual proof of their wrongdoing. Any U.S. business executive receiving from a foreign official a request or a demand for improper payments should be required to report it promptly to the U.S. Embassy, which should be required to protest vigorously to the host government. Foreign countries and companies persisting in such practices to the detriment of U.S. economic interests should be warned of the possibility of economic retaliation, ranging from termination of economic and military assistance to denial of access to our domestic markets or stock exchange listings.

Even though a strong international code is not in the offing, the Department of State should undertake to obtain in advance the approval of all affected governments for each of the legislative measures proposed above. Whatever their real feelings, they would find it difficult to object; and such a step would both dampen the cries that such legislation was imposing our standards upon the rest of the world and improve the prospects for its general effectiveness.

It is to be hoped that such laws will also be accompanied by an increased demonstration of corporate self-regulation. In light of recent revelations, this will never be an acceptable substitute for government measures. But it will still be the most effective form of regulation, if enforced, because management can establish a system of clearances for "unusual" or "potentially embarrassing" payments out in the field that no law can adequately reach. Any new legislation and its administration should thus recognize and encourage company initiatives of this kind.

That will require, however, something more than the recent public relations announcements of companies rushing to "reemphasize long-standing policy" by the issuance of new corporate practice guidelines which are either too vague to be meaningful ("do nothing unlawful or improper"); carefully designed not to interfere with their particular practices ("do not violate local law, local custom, or U.S. law; make no payments to the foreign government officials responsible for our industry"); or otherwise ineffective by design or inadvertence.

Companies no more than governments should attempt to enforce what they cannot realistically reach. But a strict, comprehensive company code should be implemented by prompt disciplinary action, including dismissal at any level for violations; by annual sworn certifications of compliance by all responsible members of management; and by a system of full disclosure to counsel and auditors as well as superiors. Such measures, if accompanied by a reduction in pressure in the field to obtain contracts by whatever means necessary, would be far more effective than the recent proposal authorizing the government to remove the chief executive of an offending company.

In evaluating governments as well as private regulation in this area, Americans should bear in mind a wise conclusion of John J. McCloy and his associates in their landmark investigation of the Gulf Oil Corporation's payments at home and abroad. "[I]t is not in the institution of rules and procedures," said that report, that the answer to this problem lies "as much as it . . . is in the tone and purpose given to the Company by its top management."

The same is true of our country.

THE STRUGGLE TO STAY HEALTHY

Mr. HOLLINGS. Mr. President, the current issue of Time magazine contains